

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3705.6 of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; general record exemption for certain financial records submitted to a public
3 body.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That § 2.2-3705.6 of the Code of Virginia is amended and reenacted as follows:**

6 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

7 The following records are excluded from the provisions of this chapter but may be disclosed by
8 the custodian in his discretion, except where such disclosure is prohibited by law:

9 General record exemption for financial records submitted to a public body:

10 1. Financial records, other than trade secrets as defined in the Uniform Trade Secrets Act (§
11 59.1-336 et seq.), submitted by a private entity to a public body, including balance sheets and financial
12 statements that are not generally available to the public through regulatory disclosure or otherwise,
13 where, if such information were made public, the competitive advantage or financial interest of the
14 private entity would be adversely affected. In order for the records specified in this subdivision to be
15 excluded from the provisions of this chapter, the submitting entity shall make a written request to the
16 public body:

17 1. Invoking such exclusion upon submission of the data or other materials for which protection
18 from disclosure is sought;

19 2. Identifying with specificity the data or other materials for which protection is sought; and

20 3. Stating the reasons why protection is necessary.

21 Existing 2014 § 2.2-3705.6 Provisions

22 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
23 132.4 or 62.1-134.1.

24 2. Financial statements not publicly available filed with applications for industrial development
25 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

26 3. Confidential proprietary records, voluntarily provided by private business pursuant to a
27 promise of confidentiality from a public body, used by the public body for business, trade and tourism
28 development or retention; and memoranda, working papers or other records related to businesses that are
29 considering locating or expanding in Virginia, prepared by a public body, where competition or
30 bargaining is involved and where, if such records are made public, the financial interest of the public
31 body would be adversely affected.

32 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
33 239 et seq.), as such Act existed prior to July 1, 1992.

34 5. Fisheries data that would permit identification of any person or vessel, except when required
35 by court order as specified in § 28.2-204.

36 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost
37 projections provided to the Department of Rail and Public Transportation, provided such information is
38 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
39 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
40 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
41 Administration.

42 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private
43 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
44 contingency planning purposes or for developing consolidated statistical information on energy supplies.

45 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or
46 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
47 Chapter 10 of Title 32.1.

48 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue
49 and cost projections provided by a private transportation business to the Virginia Department of
50 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
51 transportation studies needed to obtain grants or other financial assistance under the Transportation
52 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is

53 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
54 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
55 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
56 Administration. However, the exemption provided by this subdivision shall not apply to any wholly
57 owned subsidiary of a public body.

58 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade
59 secrets or proprietary information by any person who has submitted to a public body an application for
60 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

61 11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity,
62 its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
63 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private
64 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were
65 made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or
66 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be
67 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing
68 by the responsible public entity; and

69 b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or
70 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or
71 the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records
72 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
73 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that
74 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other
75 information submitted by the private entity, where, if the records were made public prior to the
76 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining
77 position of the public or private entity would be adversely affected. In order for the records specified in
78 clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make
79 a written request to the responsible public entity:

- 80 1. Invoking such exclusion upon submission of the data or other materials for which protection
81 from disclosure is sought;
- 82 2. Identifying with specificity the data or other materials for which protection is sought; and
- 83 3. Stating the reasons why protection is necessary.

84 The responsible public entity shall determine whether the requested exclusion from disclosure is
85 necessary to protect the trade secrets or financial records of the private entity. To protect other records
86 submitted by the private entity from disclosure, the responsible public entity shall determine whether
87 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
88 adversely affect the financial interest or bargaining position of the public or private entity. The
89 responsible public entity shall make a written determination of the nature and scope of the protection to
90 be afforded by the responsible public entity under this subdivision. Once a written determination is made
91 by the responsible public entity, the records afforded protection under this subdivision shall continue to
92 be protected from disclosure when in the possession of any affected jurisdiction or affected local
93 jurisdiction.

94 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed
95 to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
96 information concerning the terms and conditions of any interim or comprehensive agreement, service
97 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
98 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
99 that involves the use of any public funds; or (d) information concerning the performance of any private
100 entity developing or operating a qualifying transportation facility or a qualifying project.

101 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local
102 jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying
103 transportation facility," "responsible public entity," and "private entity" shall mean the same as those
104 terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
105 Facilities and Infrastructure Act of 2002.

106 12. Confidential proprietary information or trade secrets, not publicly available, provided by a
107 private person or entity to the Virginia Resources Authority or to a fund administered in connection with
108 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
109 information were made public, the financial interest of the private person or entity would be adversely
110 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
111 confidentiality.

112 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or
113 confidential proprietary records that are not generally available to the public through regulatory
114 disclosure or otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under
115 Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a
116 promise of confidentiality from the franchising authority, to the extent the records relate to the bidder's,
117 applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies
118 or implementation of improvements, where such new services, technologies or improvements have not
119 been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
120 records were made public, the competitive advantage or financial interests of the franchisee would be
121 adversely affected.

122 In order for trade secrets or confidential proprietary information to be excluded from the
123 provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon
124 submission of the data or other materials for which protection from disclosure is sought, (ii) identify the
125 data or other materials for which protection is sought, and (iii) state the reason why protection is
126 necessary.

127 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
128 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
129 applicable franchising authority serves on the management board or as an officer of the bidder,
130 applicant, or franchisee.

131 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
132 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of §
133 18.2-340.34.

134 15. Records and reports related to Virginia apple producer sales provided to the Virginia State
135 Apple Board pursuant to § 3.2-1215.

136 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,
137 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery
138 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

139 17. Records submitted as a grant or loan application, or accompanying a grant or loan
140 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
141 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
142 Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or
143 research-related information produced or collected by the applicant in the conduct of or as a result of
144 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when
145 such information has not been publicly released, published, copyrighted, or patented, if the disclosure of
146 such information would be harmful to the competitive position of the applicant.

147 18. Confidential proprietary records and trade secrets developed and held by a local public body
148 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
149 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
150 disclosure of such records would be harmful to the competitive position of the locality. In order for
151 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
152 the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the
153 records or portions thereof for which protection is sought, and (c) state the reasons why protection is
154 necessary.

155 19. Confidential proprietary records and trade secrets developed by or for a local authority
156 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
157 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of

158 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
159 position of the authority, except that records required to be maintained in accordance with § 15.2-2160
160 shall be released.

161 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
162 records of a business, including balance sheets and financial statements, that are not generally available
163 to the public through regulatory disclosure or otherwise, provided to the Department of Small Business
164 and Supplier Diversity as part of an application for (i) certification as a small, women-owned, or
165 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.) or (ii) a claim made by a
166 disadvantaged business or an economically disadvantaged individual against the Capital Access Fund
167 for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial
168 records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion
169 upon submission of the data or other materials for which protection from disclosure is sought, (b)
170 identify the data or other materials for which protection is sought, and (c) state the reasons why
171 protection is necessary.

172 21. Documents and other information of a proprietary or confidential nature disclosed by a
173 carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

174 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,
175 but not limited to, financial records, including balance sheets and financial statements, that are not
176 generally available to the public through regulatory disclosure or otherwise, and revenue and cost
177 projections supplied by a private or nongovernmental entity to the State Inspector General for the
178 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector
179 General in accordance with law.

180 In order for the records specified in this subdivision to be excluded from the provisions of this
181 chapter, the private or nongovernmental entity shall make a written request to the State Inspector
182 General:

183 1. Invoking such exclusion upon submission of the data or other materials for which protection
184 from disclosure is sought;

- 185 2. Identifying with specificity the data or other materials for which protection is sought; and
186 3. Stating the reasons why protection is necessary.

187 The State Inspector General shall determine whether the requested exclusion from disclosure is
188 necessary to protect the trade secrets or financial records of the private entity. The State Inspector
189 General shall make a written determination of the nature and scope of the protection to be afforded by it
190 under this subdivision.

191 23. Records submitted as a grant application, or accompanying a grant application, to the
192 Virginia Tobacco Indemnification and Community Revitalization Commission to the extent such
193 records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii)
194 financial records of a grant applicant that is not a public body, including balance sheets and financial
195 statements, that are not generally available to the public through regulatory disclosure or otherwise, or
196 (iii) research-related information produced or collected by the applicant in the conduct of or as a result
197 of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues,
198 when such information has not been publicly released, published, copyrighted, or patented, if the
199 disclosure of such information would be harmful to the competitive position of the applicant; and
200 memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for
201 the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that
202 are consistent with the powers of and in furtherance of the performance of the duties of the Commission
203 pursuant to § 3.2-3103.

204 In order for the records specified in this subdivision to be excluded from the provisions of this
205 chapter, the applicant shall make a written request to the Commission:

- 206 1. Invoking such exclusion upon submission of the data or other materials for which protection
207 from disclosure is sought;
208 2. Identifying with specificity the data, records or other materials for which protection is sought;
209 and
210 3. Stating the reasons why protection is necessary.

211 The Commission shall determine whether the requested exclusion from disclosure is necessary to
212 protect the trade secrets, financial records or research-related information of the applicant. The
213 Commission shall make a written determination of the nature and scope of the protection to be afforded
214 by it under this subdivision.

215 24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for
216 the use of projects of, the sale of products of, or services rendered by the Authority if public disclosure
217 would adversely affect the financial interest or bargaining position of the Authority or a private entity
218 providing records to the Authority; or

219 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent
220 that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets
221 Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and
222 financial statements, that are not generally available to the public through regulatory disclosure or
223 otherwise; or (iii) other information submitted by the private entity, where, if the records were made
224 public, the financial interest or bargaining position of the Authority or private entity would be adversely
225 affected.

226 In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded
227 from the provisions of this chapter, the private entity shall make a written request to the Authority:

- 228 1. Invoking such exclusion upon submission of the data or other materials for which protection
229 from disclosure is sought;
- 230 2. Identifying with specificity the data or other materials for which protection is sought; and
- 231 3. Stating the reasons why protection is necessary.

232 The Authority shall determine whether the requested exclusion from disclosure is necessary to
233 protect the trade secrets or financial records of the private entity. To protect other records submitted by
234 the private entity from disclosure, the Authority shall determine whether public disclosure would
235 adversely affect the financial interest or bargaining position of the Authority or private entity. The
236 Authority shall make a written determination of the nature and scope of the protection to be afforded by
237 it under this subdivision.

238 25. Documents and other information of a proprietary nature furnished by an agricultural
239 landowner or operator to the Department of Conservation and Recreation, the Department of
240 Environmental Quality, the Department of Agriculture and Consumer Services or any political
241 subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-
242 104.9, other than when required as part of a state or federal regulatory enforcement action.

243 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to
244 the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such
245 trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this
246 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)
247 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is
248 necessary.

249 27. Documents and other information of a proprietary nature furnished by a licensed public-use
250 airport to the Department of Aviation for funding from programs administered by the Department of
251 Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of
252 the public-use airport would be adversely affected.

253 In order for the records specified in this subdivision to be excluded from the provisions of this
254 chapter, the public-use airport shall make a written request to the Department of Aviation:

- 255 1. Invoking such exclusion upon submission of the data or other materials for which protection
256 from disclosure is sought;
- 257 2. Identifying with specificity the data or other materials for which protection is sought; and
- 258 3. Stating the reasons why protection is necessary.

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